

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

SYLVESTER O. IHEANACHO, doing
business as KTC TRANSPORTATION
COMPANY; and KTC TRANSPORTATION
COMPANY, INC.,

Case No. 15-CV-3014 (ADM/SER)

REPORT AND RECOMMENDATION

Plaintiffs,

v.

DARRON C. KNUTSON, doing business as
DARRON C. KNUTSON ATTORNEY AT
LAW,

Defendant.

Plaintiffs Sylvester O. Iheanacho and KTC Transportation Company, Inc. filed a complaint against defendant Darron C. Knutson for legal malpractice. Plaintiffs filed an application seeking leave to proceed *in forma pauperis* (“IFP”) in lieu of paying a filing fee. *See* ECF No. 2. This Court denied plaintiffs’ IFP application on July 17, 2015, noting that only natural persons are eligible for IFP status and that plaintiff KTC Transportation Company, Inc. would therefore not be permitted to proceed IFP. *See* ECF No. 3. Plaintiffs were given 20 days to pay the filing fee for this action and advised that failure to pay the filing fee would result in a recommendation that this action be dismissed without prejudice for failure to prosecute. *Id.* (citing Fed. R. Civ. P. 41(b)). In the alternative, Iheanacho was given leave to file an amended complaint stating only his personal claims, in which case this Court would entertain a new IFP application. *Id.*

That deadline has now passed, and plaintiffs have not paid the required filing fee, submitted an amended complaint, or filed an amended IFP application. In fact, plaintiffs have

not communicated with the Court at all since commencing this action. Accordingly, this Court now recommends, in accordance with its prior order, that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute. *See Henderson v. Renaissance Grand Hotel*, 267 Fed. App'x 496, 497 (8th Cir. 2008) (per curiam) (“A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff’s failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.”).

RECOMMENDATION

Based upon the foregoing, and on all of the files, records, and proceedings herein, IT IS HEREBY RECOMMENDED that this action be DISMISSED WITHOUT PREJUDICE under Fed. R. Civ. P. 41(b) for failure to prosecute.

Dated: August 11, 2015

s/Steven E Rau
Steven E. Rau
U.S. Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set for in LR 72.2(c).

Under Advisement Date: This Report and Recommendation will be considered under advisement 14 days from the date of its filing. If timely objections are filed, this Report and Recommendation will be considered under advisement from the earlier of: (1) 14 days after the objections are filed; or (2) from the date a timely response is filed.